

**Amendments to the Drawings:**

The attached sheet of drawings includes changes to Figs. 2-5, 8, 9, 10A and 10B. These sheets, which includes the above Figs. replaces the original sheets.

Attachment: Replacement Sheet

Annotated Sheet Showing Changes

**REMARKS/ARGUMENTS**

Upon entering the above amendments to the claims, claims 1-23 will be pending in this application and subject to a restriction requirement. Claim 1 has been amended to maintain proper antecedent basis in the claim. Support for the present amendment is found in the specification and claims as originally filed. Applicants believe no new matter is present in any portion of the preliminary amendment and respectfully request that the amendment be entered for substantive examination.

The Examiner has requested restriction to one of the following inventions (Groups I-III):

I. Claims 1-20, drawn to a method for producing enantiomerically enriched compounds having the structure depicted in claim 1, classified in class 562, subclass 472.

II. Claims 21, drawn to a salt derived from a compound recited in the claim, classified in class 562, subclass 472.

III. Claims 22 and 23, drawn to a process for enantioselectively producing compounds depicted in claim 22, classified in class 560, subclass 62.

In response to the restriction requirement, Applicants provisionally elect to prosecute the invention of Group I (claims 1-20, drawn to a method for producing enantiomerically enriched compounds, and the compounds).

Moreover, Applicants election is made with traverse. The Office alleges that Groups I and II represent distinct inventions, though related as product and process of making. The Examiner alleges that the inventions are distinct as the compounds can be made in a materially different process (MPEP §806.05(f)). Under 35 U.S.C. § 121, there are two criteria for a proper requirement for restriction between patentably distinct inventions:

- (1) the inventions must be independent or distinct as claimed; and
- (2) there must be a serious burden on the examiner if restriction is not required (emphasis added). See MPEP § 803. Applicants submit that both these criteria are not met by the presently claimed invention.

The claims of Groups I and II encompass a single inventive concept. Specifically, the invention of Group I provides compounds and methods of making compounds, specifically, (-)-4-chloro- $\alpha$ -(3-trifluoromethylphenoxy)phenylacetic acid. Likewise the invention of Group II provides the compound, (-)-4-chloro- $\alpha$ -(3-trifluoromethylphenoxy)phenylacetic acid, in an enantiomerically enriched form. Accordingly, Applicants believe that any search for the compounds of the invention, specifically (-)-4-chloro- $\alpha$ -(3-trifluoromethylphenoxy)phenylacetic acid, will provide materials relating to methods of making the compounds. Thus, Applicants believe that prosecution of Groups I and II, would not place a serious burden on the Office sufficient to justify restrictions.

With regard to the assertion that the characters in Figures 2-5, 8, 9, 10A and 10B are too small, enclosed as Appendix 1 are clear copies of these previously submitted figures with the correct font size. Reconsideration of the application is respectfully requested in view of the following remarks.

### CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for substantive review on their merits. If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 925-472-5014.

Respectfully submitted,



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